

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)

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**REPLY COMMENTS
ALLIANCE FOR PUBLIC TECHNOLOGY**

The Alliance for Public Technology (APT), a nonprofit, consumer organization with over 100 grassroots members, organizations and individuals, hereby submits these reply comments in the above referenced proceeding.

APT focused its comments on urging the Commission and the Joint Board to adopt a universal service system designed primarily to promote the more rapid deployment of advanced telecommunication services to all consumers. We urged the Commission to consider Section 706 and to utilize the tools authorized in that section, including price caps and other regulatory mechanisms. In particular, APT focused its comments on asking the Commission and the Joint Board to adopt as a goal the universal deployment, without regard to any particular technology, of a broadband, high capacity, switched system capable of supporting voice, data and graphics into and out of every home in America.

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I. There is Substantial Support For APT's Position In the Comments

A. Comments support APTs view that universal service must be defined in flexible terms to include advanced service infrastructure development.

The New York State Board of Regents and State Department of Education (NYSED) recommended that the Joint Board assure access to advanced services as an essential component of universal service and urged that it support mechanisms which focus on the concepts of band width on demand and scaleable telecommunications infrastructure. NYSED also stressed the importance of avoiding too rigid a definition of "core", "special" and "advanced" services in order not to impede the evolutionary process of the network and its service . The State of Alaska and the Washington State Library made similar pleas. NCLIS emphasized the rapidly changing levels of connectivity and the consequent need to allow for different levels of advanced service offerings. APT stressed this same point in its caution to the FCC not to adopt a one size fits all definition strategy

- The Superintendent of Public Instruction-Washington State urged that broadband telecommunications should be considered a core service. The American Association of Community Colleges regarded broadband services as essential. The California Library Association echoed a similar view that access to advanced services, particularly for low income citizens and rural, high cost areas, will become essential to effectively and equitably operate and compete in our society.

- Many state departments indicated that their states already had legislation which recognized the importance of advanced service network capabilities in the development of their telecommunications policy. Iowa urged that its statewide fiber network should be eligible for universal service funds.
- Acknowledging the importance of flexibility in the definition of universal service levels to be eligible for universal service support, the Washington Utilities and Transportation Commission urged that in order to promote universal service it is necessary to design a functional description of universal service. They proposed using the availability of and access to network capabilities rather than referring to specific services so as not to freeze universal service in the technologies and services of 1996.
- Some education and library commentators urged that in phasing in advanced services, the FCC should move towards networks capable of supporting 1.5 and ultimately 4.5 MBPS in linking the network to schools, libraries and health care providers. (Michigan Library Association, Oakland Unified School District; Access To Communications For Education, US Distance Learning Association, Illinois State Board of Education). APT's experience with the important applications of these networks leads it to support framing the goal of moving towards advanced networks using these suggested MBPS levels.

- Looking at the evolutionary nature of network development, the Texas Department of Information Resources urged that time lines be established for increasing the speed of data lines until broadband capabilities are achieved nationwide. (Id pp. 18,33) The State of Oklahoma corporation counsel also stressed the need to recognize the evolutionary nature of the technology and hence the need to reflect this in their universal service definition.

B. Commentors agree that the FCC Should Provide Proactive Leadership in Creating Incentives for Advanced Network Deployment.

APT's point that marketplace competition by itself will not assure the rapid equitable deployment of advanced services was echoed by several commentors. These commentors also supported positive action by the Commission to create incentives for the broadest possible access by all consumers to advanced network services and capabilities.

- As pointed out by Edgmont Neighborhood Coalition and ACLU, regulatory schemes that ignore the failure of the unassisted marketplace to provide services in minority and inner city neighborhoods will not succeed and urge the Commission to include regular and advanced telecommunications and information services in its conceptual framework. The National Council of La Raza made this same point with respect to the comprehensive information superhighway and advanced telecommunications services throughout the country. AARP, the Consumer Federation of America and Consumers Union

in their filing also argued not to limit universal service to high cost areas and low income citizens but to apply the concept to all citizens.

- Indeed several commentators addressed this point in dealing with the market place criterion laid down in Section 254 (b) (1) in defining how to determine the services to be included within universal service support mechanisms. They felt that these criteria should be treated as independent alternative criteria since several services may be essential but not yet subscribed to by a majority of consumers. (Association of the Bar of the City of New York Administrative Law Committee, Access to Communications For Education, New York State Consumers Board,)
- The Oklahoma corporation counsel also urged FCC to design its rules on universal service to encourage the rapid development of advanced telecommunication services to all areas of the country. The California Department of Consumer Affairs echoed this approach and argued that the most efficient action the FCC can take to assist in the availability and deployment of advanced telecommunications information services to libraries, schools and healthcare providers is to provide incentives for the telecommunications market to deploy a fiber optic broadband network platform.

- Recognizing the importance of aggregating demand, EDUCOM urged FCC to identify positive incentives rather than negative penalties for the industry to support universal service goals. Texas suggested that an important way of generating demand for advanced telecommunications services will be the offering of discounted services to schools, libraries and health care providers. The Federation of American Research Networks emphasized the need for FCC to ensure that adequate investment is made in the physical infrastructure capable of delivering high-performance access.
- Other actions by FCC to support the rapid evolution of national network capabilities to accommodate advanced services suggested by commentators supplemented those proposed by APT. APT stressed the importance of publishing information on the scope and capabilities of state networks as well as networks laid by carriers and utilities and state highway departments so that maps can be prepared showing what parts of the country can be reached by advanced network capabilities. Other suggestions included conducting regular evaluations of progress and developing monitoring instruments for infrastructure development.
- The need for pro active leadership by FCC is dramatically illustrated by the relatively few state regulatory commissions which recognized and urged that universal service principles embrace advanced services. Only the Alaska, Iowa, Texas, Wisconsin, Wyoming and Washington regulatory commissions

urged the importance of advanced services in developing universal service support mechanisms.

Unless FCC acts clearly and affirmatively to define universal service support mechanisms in terms of an evolutionary concept of network capabilities moving towards broadband networks, entire communities, regions and individuals will be left out of this rapidly developing evolution of the nation's communications to include synchronous video, audio and high speed data networks for the delivery of essential services to the citizenry of this country.

II. Comments Support the Importance of Section 706 to Universal Service Issues

Our examination of the comments in this proceeding convinces APT of the need to emphasize again a crucial policy consideration -- the great pertinence and importance of Section 706 to the sound resolution of the universal service question -- and to call for immediate focus on that facet. The grounds for this position are simply stated in the following discussion.

- The main thrust of the universal service section (sec. 254 (b)(2)) is that "[a]ccess to advanced telecommunications and information services should be provided to all regions of the nation." That is also APT's vision, as stated in its comments and its lead documents (e.g., "Connecting Each to All"). As for what is encompassed by the term, "advanced telecommunications," the Act

provides guidance in Sec. 706(c)(1) "...high speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications using any technology." That is the very concept urged upon the Congress by APT.

- The comments point out that in light of the definition criteria in sec. 254(c)(1), and especially (B) and (C) (that the telecom service has, "through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers," and "are being deployed in public telecommunications networks"), universal service today does not encompass the above advanced telecom capability. We agree with that conclusion. But the comments then drop the matter, and thus appear to be saying that other than in the case of service to specified public institutions (schools, libraries, rural hospitals), the Commission and the states should simply await market developments. Of course, private infrastructure investment is the driving force here. But it is wrong to say or imply that there is no role for governmental policy in promoting such investment. Section 706 makes clear that just the opposite is the case.
- The section states that the Commission and state PUCs "...shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans...by utilizing in a manner consistent with the public interest... price cap regulation, regulatory forbearance, measures that promote

competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." As to removing barriers, the Commission is called upon now to preempt any state barriers to open entry into local telecommunications, after appropriate process (sec. 253). The Commission and the states should forbear now from economic regulation where effective competition is found in some facet or sector. The Commission must act within the next six months to adopt its rules appropriately fleshing out the statutory standards in section 251. Thus, where the Commission sees clearly an amplification of the statutory standard that, consistent with that standard, will promote competition in the local market, it should act to make that amplification applicable on a nationwide basis. While there is no such opportunity, the Commission should follow the statutory process in section 252 (negotiation and state resolution) , allowing the states, with their "grass roots" expertise, to be laboratories, and returning to the question of national amplification at some later time after gaining needed experience from the state activities.

- Finally, there is the first statutory prescription, the use of price cap regulation by the Commission and the states. The Commission does already employ such regulation but it does so as a better or more efficient form of economic regulation to protect the monopoly ratepayer and to prevent improper cross-subsidization. It has never indicated any interest in using price cap regulation to accelerate broadband infrastructure development. On the contrary, it has

signaled the opposite. Thus, when a telephone company, in the VDT proceeding, urged the Commission to consider modification of its price cap regulation upon showing that by doing so, broadband infrastructure could be markedly promoted, the Commission sloughed aside this proposal, stressing that it wanted to place sole reliance on market forces.¹ Contrast this with the Commission's sound process in the cable area where it has engaged in social contracts, really a form of price cap regulation, that specifically promoted accelerated cable investment in advanced broadband infrastructure.² As a final example, we note that the Commission has not acted favorably on the proposal to use the consumer productivity dividend facet of the price cap regime to stimulate provision of infrastructure for educational purposes. In this respect, the Commission would appear to have lagged behind several states which have entered into "social contracts" in order to promote accelerated broadband infrastructure development.

- In short, we believe that in light of the clear provisions of section 706, the Commission (and state PUCs) must address the question: Has the agency employed price cap regulation for the explicit purpose of promoting accelerated advanced telecom infrastructure investment, where a proper showing for such action is before it? We suggest that the answer is in the

¹ Video Dialtone, Second Report and Order, 7 FCC Rcd 5781, 5833-34, 5836-37 (1992).

² *See, e.g.*, Order, in the Matter of the Social Contract for Continental Cablevision, Inc., Oct. 17, 1995, DA 95-2160.

negative -- that price cap and other economic regulation by the FCC have been geared solely to deal with the lowest possible subscriber rates and to prevent improper cross-subsidization. We do not denigrate the importance of these considerations. But clearly in light of section 706, they are not the only factors to be taken into account. The public interest is greatly promoted by the early achievement of advanced telecom capability. On this score, we rely upon our comments (pp.5-8), showing that without such capability, we will not have the full or even adequate contribution by telecommunications to the quality of life in such crucial areas as education and health care in light of the need there for a broadband reach into the home.

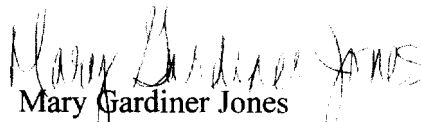
- Finally, if we are correct in the above analysis, there is a need for FCC (and in many instances, state) action in the price cap area. The Act (sec. 706(b)) calls for the Commission to initiate a proceeding within 30 months after enactment, to consider the availability of advanced telecom capability to all Americans, and to conclude such a proceeding in six months. If the answer is negative, the Commission is to take immediate action to accelerate deployment by removing barriers to investment and promoting competition. Clearly, the Commission cannot soundly wait for three years, and then say that some action is called for. It must act now along the lines indicated in the Act, including the use of price cap regulation to accelerate deployment. It can then be in position just before the turn of the century to examine whether further actions are needed -- not to regret the waste of three precious years. We leave it to the Commission to

determine how to issue a different signal in this field -- whether by a new or revised notice of inquiry or proposed rulemaking or in some other way. Our point is that doing nothing constitutes a decision to continue on an erroneous path that will militate strongly against the national interest, as expressed in the 1996 Act. Universal service is an evolving concept but its ultimate achievement, advanced telecom services to the residence, is not a matter to be left solely to the marketplace. There is an important role for governmental policy.

Respectfully Submitted,
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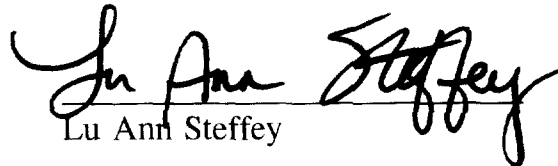
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